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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
TELEPHONE NUMBER PORTABILITY)

CC Docket No. 95-116

FURTHER COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc. (BANM), by its attorneys, submits these further comments in response to the Commission's March 14, 1996, Public Notice.¹ The Notice asks for "comment on how passage of the Telecommunications Act of 1996 may affect the issues raised in the July Notice of Proposed Rulemaking" in this proceeding.

The July NPRM addressed whether the Commission should adopt rules governing the portability of numbers issued by wireline local exchange carriers, but also asked whether number portability obligations should apply to cellular, PCS and other commercial mobile service providers. The resulting record does not support wireless number portability rules at this time. BANM and many other commenters demonstrated that (1) the concerns that the Commission voiced as to the need for wireline number portability did not apply to wireless providers; (2) there were numerous distinct and substantial technical obstacles to wireless number portability; and (3) there was no current subscriber demand for wireless

¹Public Notice, "Further Comments: Telephone Number Portability," DA 96-358, March 14, 1996.

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portability. Given this record, BANM recommended that the Commission defer considering wireless portability rules until the many technical problems could be resolved.

The Telecommunications Act supports deferring the imposition of number portability requirements on wireless providers. As the Public Notice recognizes, Section 251(b) of the Act creates a "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." But this duty applies only to local exchange carriers, which are defined in Section 3 of the Act to exclude CMRS providers. While CMRS providers have obligations under Section 251(a), number portability is not one of them. Congress' approach in Section 251 deliberately distinguished between the obligations of LECs and other carriers. Had it found that number portability was a duty that should be imposed on all telecommunications carriers, it could have included it in that list of duties set forth in Section 251(a). Instead, it limited portability obligations to LECs. Congress' decision not to expand a statutory portability duty beyond LECs strongly counsels that the Commission should not expand portability to wireless carriers.²

The record in this proceeding supplies a compelling factual basis for not imposing number portability requirements on CMRS providers at this time. The

²The legislative history of Section 251 confirms that Congress intended portability obligations to apply to LECs, not all carriers. See H. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. (1996) at 121 (distinguishing between the "general duty to interconnect" imposed by Section 251(a) on all carriers, and specific duties including portability imposed by Section 251(b) only on LECs.

Telecommunications Act adds an additional basis not to do so.³ For these reasons, as well as for the reasons set forth in BANM's Comments and Reply Comments, BANM recommends that the Commission defer further consideration of wireless number portability to a future proceeding.

Respectfully submitted,

BELL ATLANTIC NYNEX MOBILE, INC.

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³Other provisions of the Communications Act also do not support imposing number portability on wireless carriers providing CMRS. These carriers are subject to limited regulation under Section 332. The Commission has interpreted Section 332 to warrant imposing new requirements on CMRS providers only where there is a "clear cut need" for doing so. Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers, 10 FCC Rcd. 7025, 7035 (1994).

The record here fails to provide evidence of any such need for wireless number portability today, let alone a compelling one. Given this record and the documented technical problems, it is hard to see how adoption of wireless portability could be squared with the record or with Sections 251 and 332 of the Communications Act.